

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

CONCEPCION RELERFORD,

Defendant.

ORDER

06-cr-98-jcs
07-cv-726-jcs

Defendant Concepcion Relerford has filed a notice of appeal and request for a certificate of appealability from the order dated January 23, 2008¹ denying his motion for post-conviction relief brought pursuant to 28 U.S.C. § 2255. In Judge Shabaz's absence for a medical leave, I am handling defendant's case. Defendant has not paid the \$455 filing fee that is required if he is to take an appeal from the denial of his § 2255 motion. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe defendant's motion as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915.

¹In his notice of appeal, defendant asserts that he is appealing the June 12, 2008 order. The January 23, 2008 is the order that substantively denied defendant's § 2255 motion. The June 12, 2008 order merely advised defendant that his § 2255 motion had been denied.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization “unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed.” Defendant had court-appointed counsel. Therefore, he can proceed in forma pauperis on appeal unless I find that his appeal is taken in bad faith. In this case a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith. Therefore, I will deny defendant’s request to proceed in forma pauperis on appeal.

The standard for deciding whether to issue a certificate of appealability is more demanding than the standard for determining good faith. Walker v. O'Brien, 216 F.3d 626, 631 (7th Cir. 2000). None of defendant's challenges to his sentence meet the demanding standard for a certificate of appealability. In the order denying defendant’s § 2255 motion, Judge Shabaz explained clearly why defendant’s § 2255 motion was denied as untimely. Because the issue defendant wishes to raise on appeal is not debatable among reasonable jurists, a court could not resolve the issues differently and the question is not adequate to deserve encouragement to proceed further, I am declining to issue a certificate of appealability.

Defendant has the right to appeal this order denying him a certificate of appealability.

ORDER

IT IS ORDERED that defendant Conception Relerford's request for leave to proceed in forma pauperis on appeal and his request for a certificate of appealability are DENIED.

Entered this 16th day of July, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge

